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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,974	08/17/2001	David M. Binder	7226-200	5408

27383 7590 10/03/2003

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EXAMINER

TRUONG, LINH T

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,974

Applicant(s)

BINDER ET AL.

Examiner

Linh Truong

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120.

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C.

121:

I. Claims 1-5, are drawn to a bandage, classified in class 424, subclass

445.

II. Claims 11-15, and 20, are drawn to methods of skin treatment,

classified in class 602, subclass 58.

II. Claims 16-19, 21-27, drawn to methods of manufacturing a bandage,

classified in class 514 subclass 944.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice, respectively. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the bandage can be used to treat a wound, such as a burn or scar, directly.

Inventions I and III are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the loop and hook

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fastener of the carrier portion of the bandage can have a metal hook and fastener added on.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Russell DeClerk on 23 September 2003 a provisional election was made without traverse to prosecute the invention of I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Pocknell '4,991,574 (IDS).

For claims 1-2, Pocknell teaches a surgical dressing with a layer of silicone gel 2 for contact with skin laminated to an elastic, supportive carrier 3 (abstract and fig. 1).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cartmell et al. '5,674,523.

For claim 1, Cartmell et al. teach a bandage comprising of a hydrogel layer 14 and an elastic and supportive carrier layer 12 (col. Col. 1, lines 54-60 and fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 ^{is} ~~are~~ rejected under 35 U.S.C. 103(a) as being unpatentable over Cartmell et al. 5,674,523 .

For claim 3, Cartmell et al. discloses the claimed invention except for the carrier having an elastic modulus of 50%. Wrap bandages are well known in the art for being stretchable so they can be wrapped around a body portion.

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Although Cartmell et al. do not expressly teach an elastic modulus percentage, they do teach that their dressing can be used for wrapping around the body (col. 2, lines 62-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the carrier with an elastic modulus of 50%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Cartmell et al. 'in view of Fabo '5,540,922.

For claim 2, Cartmell et al. teach the claimed invention except for a silicone gel. Fabo teaches a wound dressing with a silicone gel 3 as the wound contact surface (col. 2, line 26). Therefore it is obvious to one with ordinary skill in the art to provide the dressing of Cartmell et al. with silicone gel for absorbing exudates better.

Allowable Subject Matter

Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 706-605-4974. The examiner can normally be reached on M-F 8:30am-5pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Linh Truong



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700